

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 391 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

C S PIPALIA

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR MEHTA for Petitioners

Mr M A Bukhari, APP for Respondent No. 1

MR KG SHETH for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/04/97

ORAL JUDGEMENT

This Misc.Criminal Application has been filed by two officers of the Gujarat Electricity Board (hereinafter referred to as 'GEB') for quashing of direction given by the Special Judge (Anti Corruption), Rajkot, directing investigation by Anti Corruption Bureau under section 156(3) of Criminal Procedure Code.

2. It is contended by Mr Tushar Mehta, learned Advocate for the petitioners that the learned Special Judge has exercised powers under section 156(3) of the Cr.P.C. directing the police to investigate the matter arbitrarily. He submits that the allegations in the complaint are vague and incapable of investigation. Having gone through the complaint, it is difficult to precisely state the allegations and in view of this, it will be appropriate that if the english translation of the complaint which has been provided to me is reproduced as such:

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"(1) The complainant prays for prosecution of the above accused under section of Anti Corruption Act and under the Indian Penal Code since the accused nos. 1 and 2 are indulging in corruption and are doing several illegal activities and are taking bribes and are misappropriating government money by permitting theft of electricity in the Gujarat Electricity Board.

(2) Accused No.1 C.S. Pipalia is running this scandle of corruption under the direct guidance of Purshottam Rupala, who is a BJP MLA. Accused No.1 is pressurising high officials of GEB in capacity of the Zonal Secretary of the Union. Though he was transferred, he has adjusted himself on the post under temporary order and has continued the business taking bribe without any interruption. Accused No.1 has no permanent order of posting and he is charge-sheeted. In spite of this he is sticking in Rajkot Rural Sub-Division and by taking bribe of Rs.25 lacs every month and by accumulating benami properties he is causing loss to the Electricity Board in the tune of crores of rupees. He is the Ring-leader of an in pardonable misdeed due to which people of Gujarat are getting costly electricity. Accused No.2 Kachhadia S.N. is acting as a partner in all acts of accused No.1 and is entitled to 50% of the bribe. Both the accused persons are collecting 'Haftas' from the industries situated from Rajkot to Gondal Road by permitting theft of electricity, and they have got several benami properties in their names. Such properties are also liable to Income Tax. Moreover they are never carrying out installation checking of the industries situated on

Rajkot-Gondal road. Thereby these two persons are permitting theft of electricity worth rupees five crores by taking bribe. On checking of the installations from Rajkot to Gondal road, on perusing of figures of the meters of transmission line and the bills directly show theft of electricity if the difference is seen. Accused Nos. 1 & 2 are directly involved in the same. Therefore, this is the legal complaint against both the accused persons under Anti Corruption Act and under Indian Penal Code.

(3) Accused No.1 is pressurising the Chief Engineers of the Board under the guise of Union. He is spreading communalism by showing threats in the name of Purshottam Rupala of BJP and by taking bribes from the belonging to one community, he is committing direct or indirect crimes by taking unauthorised gratification. Hence the complainant prays for taking serious steps against the accused and for punishing them.

(4) The evidence and witnesses in this case are as under:

(1) The Accountant with figures of total load of all industries situated from Rajkot to Gondal road.

(2) Accused to produce figures of transmission meters pertaining to line loss from Rajkot to Gondal Road.

(3) Chief Engineer, GEB to produce literature pertaining to theft of electricity and accounts of receipt and despatch on industries from Rajkot to Gondal Road.

(4) Liaison Officer, GEB, Energy and Petrochemicals, New Sachivalaya, Gandhinagar shall produce the figures of bills of consumption of electricity and receipts of bills as well as necessary government literature pertaining to this complaint.

(5) Apart from this, at this stage, I, the complainant reserve the right to produce further documentary evidence.

(5) The complainant, therefore, prays:

(1) Considering the facts narrated in this complaint and considering the special statement, the accused persons be punished under sections 32,34, 165(A), 406, 408, 409 of I.P.Code and sections 5,7,12,13 and other sections as may be applicable under Anti Corruption Act.

Rajkot

07.1.1997 Complainant in public interest"

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A reading of the complaint shows that the petitioner is an Advocate. She claims to be a social worker too. It is alleged that the accused No.1-C.S. Pipalia is running scandal of corruption. It is also alleged that he is taking Rs.25 lakhs every month as bribe and by accumulating benami properties, he is causing loss to the GEB to the tune of crores of rupees. It is further alleged that accused No.1 is a Ring leader of an unpardonable misdeed due to which people of Gujarat are getting costly electricity. Certain more allegations are made in the complaint. In order to appreciate the contention of the petitioner that the allegations are vague, it will be necessary to refer to some of the provisions of Criminal Procedure Code. Sub-clause '(n)' of section 2 of the Cr.P.C. defines "offence". It means any act of omission made punishable by any law for the time being in force." Section 39 cast duty on every person aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the sections as enumerated therein to forthwith inform the nearest Magistrate or police. A reading of the complaint shows that there are only general allegations and no specific instance has been shown which may be investigated and which may fall within the definition of offence. Simply saying that a person is running scandal of corruption, it cannot be said that the person has committed any offence. Similarly, allegations that the petitioner is taking bribe of Rs.25 lakhs every month and he has accumulated benami properties and is causing loss to the Electricity Board to the tune of crores of rupees is definitely vague and cannot constitute any offence on that basis. The complainant who is an Advocate, further says that the accused No.1 is the Ring-leader of an unpardonable misdeed. She further says that the accused No.2 is acting as a partner in all the acts of accused No.1 and is entitled to 50% of the bribe. The complainant has not laid any basis for such sort of allegations. It is also alleged that the accused persons are collecting 'haftas' from industries situated

from Rajkot to Gondal Road by permitting theft of electricity. If the complainant claims to be a social worker and if she has got any specific information, it is difficult to understand as to why immediately when she came to know about the incident, she did not inform the police. I have no hesitation in saying that the complaint filed by the complainant is vague. Investigation on such complaint is nothing but abuse of process of law.. It is unfortunate that the Special Judge has mechanically directed the Police for investigation under section 156(3) of the Cr.P.C. without carefully reading the complaint.

3. In view of the aforesaid, I allow this Misc.Criminal Application and quash the order dated 8.1.1997 passed by the Special Judge, Rajkot directing investigation under 156(3) of the Cr.P.C. and consequently the complaint filed by the respondent No.2 is quashed and set aside.

Rule made absolute accordingly.

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msp.